RECENT CASES

LANDLORD AND TENANT—NOTICE TO QUIT—WAIVER BY LANDLORD.—ARCADE INV. CO. v. GURIET, 109 N. W. 250 (MINN.).—*Held:* A notice to quit, given by the landlord to a tenant, may be waived by the landlord. Henceforth the notice is inoperative. It is an established rule that a notice to quit may be waived by the reception of rent after notice has been given. *Stedman v. McIntosh,* 27 N. C. 571. But mere demand of rent does not constitute a waiver, *Condon v. Barr,* 47 N. J. Law 113, nor receiving back rent due prior to notice. *Norris v. Morril,* 43 N. H. 213. So a landlord giving a second notice after the expiration of first one, waives right of proceeding on first notice. *Morgan v. Powers,* 31 N. Y. Supp. 954. Likewise a notice to a tenant by a landlord, touching the termination of the tenancy, the same recognizing the existence of a lease, amounts to a waiver of former notice. *Dockwill v. Schenk,* 37 Ill. (App.) 44. Conversely, a tenant giving landlord notice that he intends to quit and then holds over, the tenancy is regarded as continuing, *Graham v. Dempsey,* 169 Pa. 460; notwithstanding some accidental cause keeps the tenant over. *Mason v. Wiereng,* 113 Mich. 151. In New York, however, a contrary doctrine is held. *Herter v. Muller,* 159 N. Y. 28, in which case three judges dissented.

MASTER AND SERVANT—INJURIES TO SERVANT—DEFECTIVE APPLIANCES.—KENTUCKY AND INDIANA BRIDGE AND R. CO. v. MORAN, 80 N. E. (IND.) 536.—*Held,* It is the duty of the master to exercise ordinary care to furnish or provide machinery and appliances reasonably safe and suitable for his employees, and to exercise a reasonable supervision in keeping them in a reasonably safe condition for use. It is the duty of the master to use such care in providing safe and proper machinery and appliances, and in keeping the same in repair, as prudent and careful men, similarly engaged, exercise. *Gorns v. Chicago R. I. & P. R. Co.,* 37 Mo. App. 221. A master is bound to use all reasonable care, diligence, and caution in providing for the safety of those in his employ, in furnishing them with safe, sound, and suitable appliances, and in keeping the same, *Haugh v. Rissner,* 4 N. Y. St. Rep. 664; *Frank & Otis,* 15 N. Y. St. Rep. 681. It is the duty of a master to use reasonable and ordinary care and foresight in procuring appliances to be used by his servants *Dedrick v. Missouri Pac. Ry. Co.,* 21 Mo. App. 433.

MASTER AND SERVANT—INJURIES TO SERVANT.—DEFECTIVE APPLIANCES.—KNOWLEDGE OF DEFECT.—ALVES v. NEW YORK, N. H. & H. R. CO., 65 ATL. 261. (R. I.).—*Held,* an employee cannot recover from a railroad company for injuries caused by the breaking of a handle of a hand car by reason of defects in that porton of the handle which is fastened in the iron socket, and which cannot be discovered without removing it from the socket, in the absence of proof of the actual knowledge of the defect. *Wood on the Law of Master and Servant,* Section 322, says in substance that a servant in order to recover damages for injuries must prove negligence on the part of his master and due care on his own part, besides having two presumptions to rebut, (1) That the master has discharged his duty and (2) That he had no knowledge of the defect. The cases in point certainly seem to sustain this statement. Two

cases hold that an employer cannot be charged with negligence unless he knew of the defect. *Simpson v. Pittsburg Locomotive Works,* 139 Pa. 245; *Druig v. New York, O. & W. R. Co.,* 26 N. Y. Supp. 405. The court in the case of *Bogenschuiz v. Smith,* 84 Ky. 330, held that the plaintiff in order to recover damages must show, among other things, a knowledge of the master that a defect existed. When a defect is unknown to both it has also been held that the servant cannot recover. *The Mad River and Lake Erie R. R. Co. v. Barber,* 5 Ohio S. R. 541.

MASTER AND SERVANT—JOINT LIABILITY—TRADE UNIONS.—WYEMAN V. DEADY, ET AL., 65 ATL. 129 (CONN.).—*Held,* a labor union and its walking delegate, who procured plaintiff's discharge from employment, by means of threats made to plaintiff's employers, with the knowledge, approval, and authority of the union, were liable for plaintiff's discharge as joint tort-feasors.

"Interference by fraud or force with the free exercise of another's trade or occupation or means of livelihood is a tort. . . . Where a violent or malicious act is done to a man's occupation, profession, or means of obtaining a livelihood, then an action lies in all cases." *Addison on Torts,* 9-14. In accord with this doctrine it has been decided that an actor had a right of action against people who by jeering at him forced his employer to discharge him. *Gregory v. Brunswick,* 6 Man. & Ge. 205. It seems to prevail that anyone causing a contract to be broken between two parties to the injury of one of them is liable thereto. *Chipley v. Atkinson,* 23 Fla. 206. In the case of *Bowen v. Hall,* L. R. 6 Q. B. D. 338, it was held that, while it might not be unlawful to persuade one to break a contract, it would certainly be an actionable case if persuasion is used maliciously to the injury of the plaintiff or benefiting the defendant at the plaintiff's expense.

MECHANICS' LIENS—CREATION OF LIEN—STATUTES.—VOLKER-SCOWCROFT LUMBER CO. V. VANCE, 88 PAC. REP. (UTAH) 896.—*Held:* That in the absence of an express contract creating a lien, the lien which a material man becomes entitled to depends solely on the statute for its existence, for his lien is a preference which he may secure by proceeding in a particular way and complying with the statutory requirements on the subject, and not otherwise.

Mechanics' Lien Acts are an innovation upon common law, which gave no such lien, *Belanger v. Hersey,* 90 Ill. 70; *Associates of the Jersey Co. v. Davison,* 29 N. J. L. 415; equity also raises no lien in relation to real estate except that of a vendor for purchase money, *Ellison v. Jackson Water Co.,* 12 Cal. 542; therefore, being remedial, *White Lake Lumber Co. v. Russell,* 22 Neb. 126; they must be strictly construed, 1 *Bl. Comm.* 87; *Logan & Cook v. Attix,* 7 Iowa 77; and claimant must comply with all the requirements of the statute, not only in creating the lien, but also in its continuance and enforcement. *Wagner v. Briscoe,* 38 Mich. 587; *Mushlitt v. Silverman,* 50 N. Y. 360. There are cases in regard to the last point resulting in two different views, first, that the privileges under these statutes are *stricti juris,* and party claiming under them must point to express law which gives him such right of preference, *Laudry v. Blanchard,* 16 La. Ann. 173; *Willard v. Magoon,* 30 Mich. 273; second, that the acts are not to be construed *strictissimi juris* but so as to secure substantial justice, *Putnam v. Ross,* 46 Mo. 337; the substantial requirement must, however, have been in good faith. *White v. Claffin,* 32 Ark. 59.